

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAMELA EDWARDS,

Plaintiff,

Civ. Action No.
5:10-CV-0663 (DNH/DEP)

v.

SYRACUSE UNIVERSITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

CRAVATH, SWAINE LAW FIRM
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475

YELENA KONANOVA, ESQ.
DANIEL SLIFKIN, ESQ.

FOR DEFENDANT:

BOND, SCHOENECK LAW FIRM
One Lincoln Center
New York, NY 10022-4834

BRIAN BUTLER, ESQ.
ANDREW D. BOBREK, ESQ.
EMILY M.D. BROWN, ESQ.
PETER A. JONES, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently before the court in connection with this action is a motion

by defendant Syracuse University to strike a supplemental report of plaintiff's expert, Victoria Lazear, served on or about January 11, 2012 as having been prepared outside of the time period allotted for the exchange of expert reports under the court's uniform pretrial scheduling order and after Ms. Lazear's deposition. Dkt. No. 33. Plaintiff Pamela Edwards has opposed the motion, arguing that the report was not only permissible but in fact required by Rule 26(e) of the Federal Rules of Civil Procedure, additionally noting that in any event defendant was not prejudiced since the sum total of the adjustments made in the supplemental report was to reduce the amount of total damages sought by the plaintiff. Dkt. No. 35.

Oral argument was conducted concerning defendants' motion during a telephone conference conducted on February 27, 2012. During that conference I issued a verbal ruling denying defendant's motion, but permitting a further deposition of plaintiff's expert, if desired, in order to avoid any prejudice associated with the supplementation of her opinions.¹

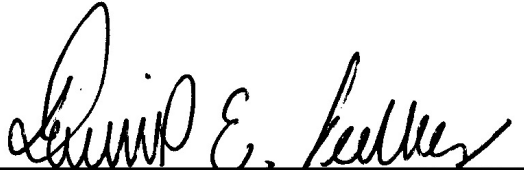
Based upon the foregoing and the court's bench decision, which is incorporated herein by reference, it is hereby

¹ Although not specifically mentioned during oral argument, I will also permit defendant to serve a supplemental responsive report by its expert, Dr. Lawrence M. Spizman, to address the matters covered in Ms. Lazear's supplemental report.

ORDERED as follows:

- 1) Defendant's motion for an order striking the supplemental expert report of Victoria Lazear, dated on or about January 11, 2012, pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure (Dkt. No. 33) is DENIED.
- 2) To ameliorate any potential prejudice associated with the late service of Ms. Lazear's supplemental report, plaintiff shall be permitted to serve a supplemental report of Dr. Lawrence M. Spizman, and to take a further deposition of Ms. Lazear, both limited to addressing the additional matters contained within her supplemental report.
- 3) The expense associated with Ms. Lazear preparing for and attending that the deposition authorized herein shall be borne by the plaintiff.
- 4) No costs or attorney's fees are awarded to any party in connection with defendant's motion, except as set forth in the foregoing paragraph.

Dated: February 29, 2012
Syracuse, NY


David E. Peebles
U.S. Magistrate Judge